



## **Wisconsin Chapter American College of Emergency Physicians**

Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing  
Wisconsin State Senate

Senate Bill 66 Testimony

Wisconsin Chapter of the American College of Emergency Physicians

June 4, 2009

Thank you to Senators Taylor and Sullivan and the Members of the Committee for holding this hearing today on Senate Bill 66.

The Wisconsin Chapter of the American College of Emergency Physicians is a professional association representing emergency physicians across the state. Emergency physicians treat all patients, regardless of their ability to pay. Under the federal EMTALA law, insurance status, type of insurance, or financial means may not be used to withhold needed emergency medical services. Much like the police and fire department, which must be staffed at full strength at all times, the emergency department is an essential public service depended upon by every member of the community.

Emergency physicians often see firsthand the devastating injuries that result from alcohol-related automobile accidents, and we certainly believe any reasonable regulation that reduces the possibility of these injuries is well worth the effort.

On behalf of the Wisconsin Chapter of the American College of Emergency Physicians, we register our support for Senate Bill 66. We believe the provisions of this bill are appropriate and reasonable and will improve the safety of Wisconsin drivers and their passengers.

# **SAFE STREETS TREATMENT OPTION PROGRAM**

## **(SSTOP) SUMMARY**

December 2006 – April 2009

### **Statistical Information:**

Referred:	354		
Completed:	131		
Revoked: (see below)	78	(includes 9 administrative terminations)	
Completed & Repeated	10		
Active clients:	145		
Females	=	96	(average age 38)
Males	=	258	(average age 35)
2 <sup>nd</sup> OWI	=	163	
3 <sup>rd</sup> OWI	=	191	

Revoked		
Noncompliant to assessment (NCI)	=	33
Noncompliant to plan (NCP)	=	42
Total revoked:	=	69
Administrative Revocations		
Residence requirement	=	8
Deceased	=	1
Total	=	9
 Total	=	 78

### **Treatment Referrals:**

Multiple Offender Program (MOP)=	116
Treatment	= 179
Complete Driver Safety Plan	= 150

### **Hard Cost Savings:**

Jail:		
Jail days: total	=	17535
imposed	=	4978
stayed	=	12,544
revocations	=	(2726)

Jail savings 12/06-11/07: 6940 - 3625 = 3315 days x \$54.00 per day = **\$179,010**

12/07-04/09: 10,595 - 3547 = 5448 days x \$65.89 per day = **\$429,329**

Total: **\$608,349**

### **Community Service:**

Ordered:	=	10,678
Completed:	=	5075

**Recidivism Rate:** 7% 10 subsequent OWIs from the 131 who completed SSTOP. 11 OWIs while engaged in SSTOP, 1 OWI before admission to SSTOP. 6% of SSTOP clients have reoffended to date.

Information does not include the societal savings of SSTOP program including court related time, property damage, injury and death, family etc.

**"Over the Limit, Under Arrest" and now the "Zero Tolerance" campaign? Alternative and cost effective measures to making 3<sup>rd</sup> and 4<sup>th</sup> OWIs felonies.**

The Wisconsin Impaired Driving Program Plan is to "Develop a statewide public information and education campaign to reduce OWI injuries and fatalities based on NHTSA's new slogan "Over the Limit; Under Arrest" The Wisconsin Department of Transportation (WIDOT) and the National Highway Transportation Safety Administration (NHTSA) both promote this slogan to combat "drunk driving."

I am concerned about any measure to address Drunk Driving in Wisconsin when the agency that is responsible for highway safety promotes drinking and driving. "Over the Limit, Under Arrest" as its mantra because it infers that drinking and driving is legal below .08. Before the legislature considers enacting any law increasing the penalties for OWIs, they should ensure they have the facts to support a change in the law and not let the media shape public policy by selectively abstracting facts and information and arbitrarily inferring there is a need to change existing law.

Drinking alcohol is a personal choice for which the individual is responsible. However, none are immune to alcohol's effects once ingested and all are responsible for their behavior while under the influence. A NHTSA study by Herbert Moskowitz and Dary Fiorentino (April 2000) concluded that at relatively low blood alcohol content (BAC) of .03 - .05 that thinking, judgment, decision making, insight and the ability to "self-monitor" are affected. This results in a diminished capacity to assess if one can drive safely. The study concludes that the data identified no threshold BAC below which impairment does not occur.

Why most people drive after drinking is that their thinking (which is affected at .03-.05) is impaired. They conclude that nothing will happen if they drink and drive. This is reinforced by the multiple times they have operated while under the influence and not been arrested or had an accident. The Wisconsin legislature provides for law enforcement officers to arrest and cite motorists for OWI if they suspect a person is impaired, regardless of blood or breath alcohol level. You can be arrested and convicted of OWI if your blood alcohol level (BAC) is below .08. The legislature also provides judges with sentencing discretion based on the circumstances of the OWI incident which may range from a traffic offense to homicide. Operating under the influence of an intoxicant is illegal in the state of Wisconsin. Now what could be done?

Keep sentencing within purview of judges by providing them a range of sentencing options, not **legislatively mandated sentences!** The current statutes provide for a full range of sentences given the merits of a particular case. The legislative and judicial branches of government need to remain separate with regard to sentencing. Mandate all multiple offenders to present for an alcohol assessment and be held in contempt if they do not. Then, there are options in the Wisconsin Administrative Code that allow for a combination of punishment and treatment before legislation need be passed to increase OWI penalties.

**HFS 62: ASSESSMENT OF DRIVERS WITH ALCOHOL OR CONTROLLED SUBSTANCE PROBLEMS:** HFS 62.07 (5) Driver Safety Plan Recommendations (d) Other recommendations. In addition to the recommendations under pars. (a) to (c), a driver safety plan may recommend any of the following:  
**3. Intensive supervision** as described under s. HFS 75.16 (7) if a treatment service is also recommended.

**COMMUNITY SUBSTANCE ABUSE SERVICE STANDARDS HFS 75.02 Definitions: (33m) "Intensive supervision"** means a program to promote public safety and reduce incarceration and recidivism related to substance abuse that includes all of the following:

**(a) Centralized screening, review, evaluation, and monitoring of offenders by caseworkers in coordination with law enforcement, the district attorney, the courts, or the department of corrections.**

**(b) Community supervision of offenders from the time of arrest and formal charging through adjudication and compliance with court orders.**

**(c) Coordination of an array of interventions for the offender while under community supervision. Interventions to be coordinated may include any of the following:**

1. Assessment.
2. Case management.
3. Alcohol or other drug abuse treatment.
4. Education.
5. Specialized education or skill-building programs.
6. Obtaining an intoxicated driver assessment under ch. HFS 62.
7. Periodic breath tests or urine analysis.
8. Attendance at victim impact panels.

**(d) Programs such as the treatment alternative program under ch. HFS 66.**

**(e) A pretrial intervention program.**

**75.16 (7) INTENSIVE SUPERVISION SERVICE.** (a) The purpose of intensive supervision under this section is to promote public safety and reduce incarceration and recidivism related to substance abuse through centralized screening, review, evaluation, and monitoring of offenders by caseworkers in coordination with law enforcement, the district attorney, the courts, or the department of corrections and includes all of the following services:

1. Screening under s. HFS 75.03 (10) (c) and other multidisciplinary screenings and psychosocial evaluations.
2. Conducting substance use evaluations and developing treatment recommendations by a substance abuse counselor.
3. Facilitating specialized education and skill-building groups where the primary group topic is alcohol and other drug abuse education, intervention, or relapse prevention and the participants are persons having alcohol or other drug abuse problems.

**(b) Staff providing approved intensive supervision program service components shall have knowledge, training, and experience in the component they are providing or otherwise meet the qualifications to provide the service.**

**(c) Agencies providing intensive supervision shall comply with all requirements included in s. HFS 75.03 that apply to an intervention service as shown in Table HFS 75.03 and this subsection except intensive supervision services are not required to meet the requirement under sub. (4) (j).**

**(d) Intensive supervision services provided by agencies certified under s. HFS 75.12 or 75.13 need not also be approved under this section. However, the program shall comply with all the requirements that apply to intensive supervision programs under this subsection.**

It appears that the administrative code provides the means to address repeat offense OWIs in Wisconsin. This appears to be the logical and most cost effective means of combining intervention or treatment with some punishment or coercive measures. It would require that repeat OWI offenders be on probation to the court. All repeat offenders. Sentencing guideline would be decided by district. An option could be to sentence maximum i.e. 6 months for 2<sup>nd</sup> OWI, impose x days and stay the remainder. The offender would not have an option to engage in this program because of the need to reduce recidivism and increase public safety. County case managers would provide feedback to courts about offender compliance and make sanction recommendations i.e. more jail for noncompliance. The alcohol monitoring bracelet and home detention could be used for the punitive sanctions; thereby ensuring offenders can work, be with family, get treatment, and still contribute to the state's economy. The cost of jail and its economic and social impact to the family and by extension the community are

prohibitive. This type of program will not add anything to DOC budget but it will to counties. Therefore, you as legislators will need to share the burden of cost or find a way to fund this initiative. I encourage collaboration with the Tavern League in this endeavor. And a public information campaign informing the public that if they are apprehended for a repeat offense OWI in Wisconsin they will be in on probation.

The state's Alcohol Beverages Statute Chapter 125 reveals why Wisconsin ranks so high in many alcohol categories. We are **dependent** on alcohol revenue.

**125.01 Legislative intent.** This chapter shall be construed as an enactment of the legislature's support for the 3-tier system for alcohol beverages production, distribution, and sale that, through authority over the production, storage, distribution, transportation, sale, and consumption of alcohol beverages by and to its citizens, for the benefit of the **public health and welfare and this state's economic stability.**

"But the Wisconsin tradition meant more than a simple belief in the people. It also meant a faith in the application of intelligence and reason to the problems of society. It meant a deep conviction that the role of government was not to stumble along like a drunkard in the dark, but to light its way by the best torches of knowledge and understanding it could find."

Adlai Stevenson  
Madison, Wisconsin  
October 8, 1952

Mike Olig  
Licensed Professional Counselor (LPC) &  
Clinical Substance Abuse Counselor (CSAC)

## Wisconsin and NHTSA Data

		%OWI	OWI + PAC 46,065
1. Operating under influence/controlled substance	35,626		
2. Prohibited Alcohol Concentration	9,217		
3. Underage Alcohol Operation	1,222		
4. Operating Intoxicated Causing Injury	493	.013	.009
5. Great Bodily Harm	65	.0018	.001
6. Negligent Homicide Intoxicated	37	.001	.0008

Alcohol related deaths 337 percentage of total = .009

Alcohol related injury 5,500 percentage of total = .15

46,065 x 87 (number MADD estimates that a person drives for each OWI arrest) = 4, 000, 655 OWI episodes.

Questions to ask and contemplate.

When does drinking and driving become a crime? Upon arrest or when done?

What do we mean by recidivism? Is it getting caught again or simply repeating the behavior?

Why do legislators want to criminalize a socially acceptable although illegal behavior when the statutes provide for criminal penalties based on the circumstances of a case?

How many drivers died in alcohol related accidents?

How many passengers died in alcohol related accident and in whose vehicle?

How many persons died in alcohol related accidents that were not in the impaired driver's vehicle? Or how many people were "killed" by a drunk driver?

What is an accident?

What is the number of single vehicle/drivers in alcohol related deaths?

What is the percentage of the OWI/PAC cited population with an estimate of impaired driving episodes?

Why if the median BAC is .17 do we not have more alcohol related accidents?

If saving lives is the premise for stricter OWI laws, why do we not have an absolute sobriety for operating motor vehicles in Wisconsin?

Why does Wisconsin DOT sponsor "Over the Limit, Under Arrest" campaign when you can be arrested in Wisconsin regardless of blood or breath levels?

Why, when the majority of alcohol related accidents involve 1<sup>st</sup> OWIs, do some in the legislature believe that making a 3<sup>rd</sup> OWI a felony will prevent more alcohol related accidents?

Why do legislators rely on MADD for OWI statistics when MADD misrepresents those statistics to support their agenda?

**Why do people assume alcohol related accidents mean alcohol caused accidents?**

**Why aren't other accident factors taken into consideration?**

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# 0.08 BAC law in Wisconsin

Wisconsin Department of Transportation

## The new standard

On July 3, 2003, Wisconsin became the 43<sup>rd</sup> state to enact legislation lowering the prohibited BAC (Blood / Breath Alcohol Concentration) level for OWI (Operating While Intoxicated) to 0.08 percent BAC, thanks to the leadership of Governor Jim Doyle and traffic safety advocates across the state.

- Wisconsin's law is effective September 30, 2003.
- The new 0.08 standard applies to first, second, and third OWI offenses. Fourth and subsequent offenses remain subject to 0.02.

## Saving lives, preventing injuries

Scientific studies show that drivers are impaired at and above 0.08. Braking, steering, lane changing, speed control and attentiveness are all compromised at this level.

- Wisconsin had 304 alcohol-related fatalities in 2001.
- 24 lives (8%) could have been saved in 2001 with a 0.08 law (US DOT estimate).

## Addressing first-time offenders

An often repeated, but *incorrect*, assertion is that repeat offenders, and those with very high blood or breath alcohol levels constitute the "real" drunk driving problems.

- The truth is, people with NO prior OWI history are involved in the *majority* of alcohol-related crash fatalities and injuries.
- In 2000, the most recent year for which data is available, 68% of drinking drivers involved in fatal and serious injury crashes had no prior OWI history.
- 0.08 encourages the average person to think twice before drinking too much and driving.

## Effect on the average social drinker

0.08 does not target the average social drinker who may have a couple of drinks after work or a glass or two of wine with dinner (*see alcohol level charts on the back*).

- The median BAC for people arrested for OWI and who test positive for alcohol in their system is 0.17. In 2001, 82% of those arrested and tested were at 0.10 or above.

## Impact on law enforcement

The new 0.08 law will not necessarily lead to more people being stopped for suspicion of OWI. But an increase in the OWI *conviction rate* would be a possible result of the 0.08 law.

- Law enforcement officers in Wisconsin already have authority to arrest and cite motorists for OWI if they suspect a person is impaired, regardless of blood or breath alcohol level.
- Of the 37,077 people *arrested* for OWI in 2001, 990 (2.7%) tested in the 0.080 to 0.099 range.

## How many drinks = 0.08?

The following charts can be used to estimate blood or breath alcohol concentration (BAC).

**How to use:** Given a person's weight and the number of drinks, the chart provides a BAC.

- Subtract from this number the amount of alcohol eliminated since the time of the first drink, using the average of 0.015 per hour (for men), or 0.018 per hour (for women).

### Alcohol chart (men)

Body weight	Number of drinks					
	1	2	3	4	5	6
120 lbs.	.031	.063	.094	.125	.156	.188
130 lbs.	.029	.058	.087	.116	.145	.174
140 lbs.	.027	.054	.080	.107	.134	.161
150 lbs.	.025	.050	.075	.100	.125	.151
160 lbs.	.023	.047	.070	.094	.117	.141
170 lbs.	.022	.045	.066	.088	.110	.132
180 lbs.	.021	.042	.063	.083	.104	.125
190 lbs.	.020	.040	.059	.079	.099	.119
200 lbs.	.019	.038	.056	.075	.094	.113
210 lbs.	.018	.036	.053	.071	.090	.107
220 lbs.	.017	.034	.051	.068	.085	.102

#### Estimates only

- These alcohol charts are general guidelines.
- Actual alcohol concentrations achieved may vary.
- All individuals are impaired at levels of 0.08 and greater.

(See red bold text in the charts.)

EXAMPLE: A 180-pound man could have **four** drinks within **one hour** - a considerable amount of drinking - and his BAC would be: .083 (from the chart) minus .015 (.015 x 1 hour) = .068.

### Alcohol chart (women)

Body weight	Number of drinks					
	1	2	3	4	5	6
90 lbs.	.053	.106	.159	.212	.265	.318
100 lbs.	.047	.094	.141	.188	.235	.282
110 lbs.	.042	.084	.126	.168	.210	.252
120 lbs.	.038	.076	.114	.152	.190	.228
130 lbs.	.036	.072	.108	.144	.180	.216
140 lbs.	.033	.066	.099	.132	.165	.198
150 lbs.	.031	.062	.093	.124	.155	.186
160 lbs.	.028	.056	.084	.112	.140	.168
170 lbs.	.027	.054	.081	.108	.135	.162
180 lbs.	.026	.052	.078	.104	.130	.156

#### What is a drink?

For the purposes of these charts, a "drink" is:

- 12 oz. of 4.2% beer (a typical "lite" beer)
- 4 oz. of 12-13% wine
- 1.25 oz. of 80-proof liquor

EXAMPLE: A 120-pound woman could have **three** drinks within **two hours**, and her BAC would be: .114 (from the chart) minus .036 (.018 per hour x 2 hours) = .078.

NOTE: These BAC figures are for drinking *without* eating. Having something to eat along with a drink may slow alcohol absorption and lead to a lower blood or breath alcohol concentration.

Chart Source: Chemical Test Section, Wisconsin Department of Transportation, Division of State Patrol

September 2003

More drunk driving information can be found at [www.dot.wisconsin.gov/safety/motorist/drunkeiving/index.htm](http://www.dot.wisconsin.gov/safety/motorist/drunkeiving/index.htm)

# COURT ORDER FOR INTOXICATED DRIVER ASSESSMENT AND DRIVER SAFETY PLAN

Wisconsin Department of Transportation  
s.343.30(1q) or 343.305(10) Wis. Stats.  
MV3632 1/2006

## Individual

Name (Last, First, MI)	Birth Date	Sex	Driver License Number	State
Address		City, State, ZIP Code	County of Residence	Area Code - Telephone

## Court

Convicting Court Name	Convicting Court Address, Street, City, ZIP Code		
Judge	Court Area Code - Telephone Number		
Citation Number	Court Case Number	Non-UTC Number	Conviction Date

## Arrest Information

Arrest Date(s)	BAC Level or CS
----------------	-----------------

First	Second	Third	OFFENSE
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Implied Consent Refusal</b> - s.343.305(9) Wis. Stats.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Operating while under the influence</b> - s.346.63(1)(a) Wis. Stats.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- s.346.63(1)(am) Wis. Stats.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- s.346.63(1)(b) Wis. Stats. = or > .08 and < .10 BAC (1 <sup>st</sup> offense No assessment required)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- in conformity with a local ordinance
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Causing Injury</b> - s.346.63(2) Wis. Stats.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Causing Injury/Great Bodily Harm</b> - s.940.25 Wis. Stats.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Causing Homicide</b> - s.940.09 Wis. Stats.

Referred to Assessment Facility - Name	
Street Address	
City, State, ZIP Code	
Area Code - Telephone Number	
Information Attached for Assessment Facility	
<input type="checkbox"/> Citation	<input type="checkbox"/> Related Offenses
<input type="checkbox"/> Complaint	<input type="checkbox"/> Other:
<input type="checkbox"/> Accident Report	
<input type="checkbox"/> Driver Record	

Having been found guilty or having had an adverse finding for the offense indicated above, involving intoxicated use of a motor vehicle, you are ordered by the Judge and Court named above, to submit and comply with an assessment by the approved public treatment facility of your county of residence, as defined in s.51.45(2)(c) Wis. Stats., (or, as referred, to your state of residence). You are further ordered to submit and comply with the development of a driver safety plan.

The purpose of the assessment is to examine your use of alcohol or controlled substances and to develop a driver safety plan. Based on the assessment findings, your plan will involve attendance at a school under s.345.60 Wis. Stats., (or an educational program in another state), treatment, or both. This order and referral shall also serve as notice to you, encouraging your cooperation, since noncompliance with the assessment or the driver safety plan or failure to complete the driver safety plan within 12 months will result in withdrawal of your operating privileges by the Wisconsin Department of Transportation for an indefinite period until you are in compliance. The assessment facility's report on the assessment and the driver safety plan or referral will be submitted within 14 days to the Wisconsin Department of Transportation, the county department under s.51.42 Wis. Stats. Or its approved agency, the driver safety plan provider, and yourself.

\_\_\_\_\_  
(Court Official Signature)

\_\_\_\_\_  
(Date)

I agree to contact the above-named assessment facility within 72 hours to set an appointment for the assessment or request a transfer. I am aware that a fee is charged and must be paid to comply with assessment or any referral. I understand that the assessment facility will report to the Wisconsin Department of Transportation my compliance status and any referral. My failure to participate will result in the Wisconsin Department of Transportation's indefinite withdrawal of my Wisconsin operating privileges until I do satisfactorily complete assessment and my driver safety plan.

\_\_\_\_\_  
(Defendant Signature)

\_\_\_\_\_  
(Date)

**Distribution:** 1 - Court; 2 - Assessment Facility; 3 - Defendant



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TOLL FREE: 1.866.404.2700  
PHONE: 608.663.7188  
FAX: 608.663.7189  
www.wicounties.org

## MEMORANDUM

TO: Honorable Members of the Senate Committee on Judiciary, Corrections,  
Insurance, Campaign Finance Reform, and Housing

FROM: Sarah Diedrick-Kasdorf, Senior Legislative Associate

DATE: June 4, 2009

SUBJECT: Senate Bill 66 – Testimony for Information Only

The Wisconsin Counties Association (WCA) is taking this opportunity to make a few comments on Senate Bill 66 relating to the operation of a motor vehicle while under the influence of an intoxicant and the penalties associated with such violations.

Providing testimony on legislation cracking down on drunk drivers is rather difficult for counties. While we do not condone drunk driving and support programs to treat offenders, counties do not have the resources available to support what may appear to be the right thing to do – increase penalties for individuals convicted of drunk driving offenses – without added funding to implement the changes.

### Ignition Interlock Devices

The Wisconsin Counties Association (WCA) has a long-standing position to support legislation providing judges with the ability to order installation of an ignition interlock device only if the program is fully funded by the state or the offender. While this legislation does require payment by the offender, reducing the amount of the fine imposed by the amount necessary to pay for the installation and maintenance of the ignition interlock device for certain offenders will negatively impact county revenues.

### Increasing the Penalties for OWI

Senate Bill 66 increases the minimum jail time for a third OWI offense from 30 days to 60 days and changes 3<sup>rd</sup> and 4<sup>th</sup> OWI offenses from misdemeanors to felonies. The effect of these changes will mean increased bed days in county jails, with no funding source to cover increased county costs. The change from a misdemeanor to a felony will also increase county court costs and costs paid by counties for indigent defense services.

Utilizing the numbers in the fiscal estimates (3<sup>rd</sup> offense only), there are 1300 cases times an additional 30 days in jail (minimum) times the average daily costs for a jail inmate of \$51.46 (DOC contract costs), the cost to county jails will be, at a minimum, \$2,006,940. This cost estimate does not include increased jail time for 4<sup>th</sup> offense OWI convictions, which we are certain judges will impose if the minimum sentence for third offenses increases, increased jail time above the minimum amounts called for in the bill, etc.

Counties just do not have the resources at this time to take on these additional costs. With levy limits and the loss of significant revenue in the 2009-2011 state biennial budget, counties will be cutting services pretty significantly. Any additional costs to counties at this time simply cannot be absorbed without additional resources.

#### Winnebago County SSTOP Program

2005 Wisconsin Act 389 created a pilot program to allow Winnebago County to reduce mandatory sentences for second and third offense OWI offenders if the violator successfully completes a probationary period that includes alcohol and other drug treatment. Winnebago County's program has met with great success - in its first year the county realized a \$205,000 savings in jail bed days and a 4% recidivism rate for program participants.

Other counties have expressed an interest in implementing the program, known as the "Safe Streets Treatment Option Program (SSTOP)." However, state statute only allows the program to operate in Winnebago County.

County officials from across the state agree that treatment is a more effective means of increasing public safety than simply suspending an individual's driver's license or spending a few days in jail. Expanding the SSTOP program statewide provides counties with an additional tool to curb drunk driving in this state.

Thank you for considering our comments.

**Date:** June 4, 2009

**To:** Senate Committee on Judiciary, Corrections, Insurance, Campaign  
Finance Reform, and Housing

**From:** Shel Gross, Director of Public Policy  
Mental Health America of Wisconsin

**Subject:** SB66

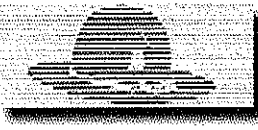
Mental Health America of Wisconsin (MHA) would like to express its support for SB66. We are heartened to see so much attention being given to drunk driving issues in this legislative session. We understand that there are a range of options with regard to the proposals that have been introduced and a range of opinions about the "correct" level of penalties for various offenses. From our point of view the important thing is to do something; to send a message that Wisconsin no longer tolerates drunk driving.

As a member of the Wisconsin Prevention Network, MHA recognizes that the costs of substance abuse on our state are huge. A recent report from the Center for Addiction and Substance Abuse (CASA) at Columbia University documents that Wisconsin spends \$2.4 **billion** annually in state funds for costs incurred as a consequence of substance abuse (<http://www.jointogether.org/getinvolved/state/wisconsin/wisconsin-state-page.pdf>). This is almost 10% of the state budget. Therefore it is important we start to change the culture of alcohol in Wisconsin away from one that fails to discourage excess drinking and drunk driving.

The CASA report points out as well that Wisconsin spends only \$15 **million** per year on substance abuse prevention and treatment. While we support the Legislature's effort to raise penalties on drunk driving we also urge you to consider increasing prevention and treatment funding. This will ultimately be the only way to address all the negative consequences of substance abuse. So when you finish your work on SB66 please turn your attention to increasing the excise tax on alcohol, a sensible way to fund increased prevention, treatment and enforcement.

Thank you.

[www.mhawisconsin.org](http://www.mhawisconsin.org)



## Wisconsin Troopers' Association

Casey Perry – Executive Director

Glen Jones – President

2099 Ironwood Drive, Green Bay, Wisconsin 54304-1972

Phone: (Toll Free: 1-800-232-1392) Fax: (Toll Free: 1-800-232-1392)

<http://www.wi-troopers.org/>

TO: Senator Sullivan, Members of the Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing

FR: Casey Perry, Executive Director, Wisconsin Troopers' Association

DA: June 4, 2009

RE: Support for SB 66, operation of a motor vehicle while under the influence of an intoxicant and providing a penalty.

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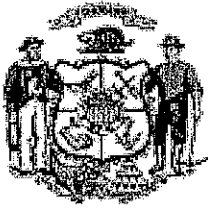
The Wisconsin Troopers' Association (WTA) supports Senate Bill 66, a comprehensive approach to the severe, multi-faceted issue of drunk driving. Members of the WTA commend Senator Sullivan and his forward thinking in crafting this proposal to address an expanding problem in Wisconsin.

SB 66 cracks down on penalties, addresses the need for rehabilitation and includes requirements for ignition interlock devices. It gives law enforcement the tools they need to enforce Wisconsin's laws and allows the court system flexibility in their important role.

In order to curb drunk-driving, a broad approach that includes all components is critical to deter offenders who drive drunk and to prevent them from committing the same serious crime in the future. The bill offers treatment to drunk drivers by expanding Winnebago County's alternative sentencing pilot program, increases the use of ignition interlock devices, and toughens penalties for OWI offenders.

The priority of the Wisconsin Troopers' Association is to ensure public and highway safety. SB 66 will assist us in our work to maintain a safe environment for motorists in the state of Wisconsin and we urge your support.

Thank you for your time and consideration. Please feel free to contact Annie Early at 414-405-1050 with any questions or concerns about our position.



## STATE OF WISCONSIN JUDICIAL COUNCIL

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Suite 822, Tenney Building, 110 East Main Street, Madison, WI 53703-3328 (608) 261-8290

**Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform,  
and Housing  
Testimony Regarding Senate Bill 66  
by Wisconsin Judicial Council Attorney April Southwick  
June 4, 2009**

I appreciate the opportunity to appear before you today to speak regarding Senate Bill 66. Among its many provisions, this bill requires the Judicial Council to establish statewide advisory sentencing guidelines for OWI offenses to replace the district guidelines currently in place and make those guidelines and any revisions available to judges and attorneys at least annually. The Council is concerned that it is not the appropriate body to undertake this responsibility for three primary reasons: 1) the project deviates substantially from the Council's current and historical statutory authority; 2) the assignment could completely supplant the projects the Council is currently working on, and limit its ability to accept new projects in the future; and 3) the Council lacks the staff and budget to give this project the time and attention that it will require.

### **Substantive vs. Procedural Law**

Establishing advisory sentencing guidelines differs greatly from the projects previously undertaken by the Council because it involves substantive law, as opposed to procedural law. Substantive law creates, defines and regulates legal rights and obligations. Laws prohibiting or requiring certain behaviors and specifying penalties are substantive. Procedural law encompasses the rules that are used to enforce substantive laws. For example, the rules by which a court hears and determines what happens in a civil or criminal trial.

The Council's current statutory jurisdiction under Wis. Stat. § 758.13 (2) extends to making recommendations regarding procedure and practice, not to substantive matters such as sentencing, so this bill proposes a significant change to the nature of the Council's work.

#### **Agency History:**

The Judicial Council was created nearly 60 years ago to improve the Wisconsin justice system by studying the rules of pleading, practice, and procedure of the courts and recommending changes to the Supreme Court, the Legislature, and the Governor. It is an independent, non-partisan Judicial branch agency.

In addition to its many smaller accomplishments, the Council's best known work product includes Wisconsin's rules of civil procedure, rules of appellate procedure, rules of criminal procedure and rules of evidence. The Council continues to amend and update these core rules of procedures under which all Wisconsin state courts operate, along with undertaking many smaller projects.

#### **Current Projects:**

- During this past council year, the Council provided comments and recommendations regarding legislation to improve municipal courts.
- The Council has been working on comprehensive criminal procedure amendments for several years. Drafting by the Legislative Reference Bureau is currently underway, and is nearly complete.
- The Council's Appellate Procedure Committee is currently drafting amendments to address problems with presentence investigation reports and the appeal process.
- The Council's Evidence & Civil Procedure Committee drafted rules regarding the discovery of electronically stored information, and a rule change petition is currently pending before the supreme court.

- The Council is also working to respond to supreme court requests for recommendations regarding rates paid to court appointed attorneys and the small claims appeal process.
- This past year the supreme court granted several petitions filed by the Council, including rule changes for depositions conducted outside the state, and citations to unpublished court of appeals opinions.
- The most recent project undertaken by the Council is a comprehensive review of the rules of evidence; the first comprehensive review since their adoption in the early 1970's. Over the years, amendments to individual rules, changes at the federal level, as well as advances in technology and new case law make a comprehensive review necessary to keep the rules cohesive and consistent with modern practice.

It's important to note that members of the Council are all volunteers. They are attorneys and judges working in a wide variety of fields, but they all have one thing in common: a limited amount of time to volunteer, and a commitment to work on the Council's core mission – procedural law development. A project such as drafting sentencing guidelines would likely displace some, if not all, of the current projects that have been undertaken by the Council, causing significant delay to needed amendments. The required annual update of the guidelines would continue to delay other important Council projects.

#### **Fiscal Impact:**

The Council currently meets once a month from September through June (10 meetings per year) with meetings generally lasting from two to four hours. Approximately 2/3 of the Council's members are public sector employees, while the other 1/3 of members are from the private sector.<sup>1</sup> Over sixty percent of the Council's members are located in Milwaukee or other

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<sup>1</sup> The Judicial Council members include a supreme court justice, four circuit court judges, one court of appeals judge, the Attorney General's representative, a district attorney, the State Public Defender's representative, the Director of State Courts, the Chief of the Legislative Reference Bureau, the chairpersons of the State Senate and

areas of the state which require a considerable amount of travel to attend Council meetings, which are held here at the Capitol.

It is extremely difficult to coordinate additional meeting dates for 21 busy attorneys and judges. Historically, when the Council a time-sensitive project such as the one currently proposed, they dedicate significant blocks of time to the work in order to reduce the total number of meetings required. Full-day meetings require hotel accommodations and meals for out-of-town members, in addition to mileage reimbursement. Unfortunately, the Council has no funds in its FY10 or FY11 budgets for additional meetings or hotel accommodations for its members.

OWI sentencing guidelines will require a significant amount of staff time and resources not currently in the Council's budget. Currently, the Judicial Council is staffed by only one attorney with no administrative support. This project will likely require a considerable amount of research, the compilation of a large amount of statistics and data, and consultation with experts in the field of alcohol treatment and abuse. There will also likely be significant costs for printing and distribution of information.

At this preliminary stage and without a more detailed explanation of the goals and scope of the project, it is impossible to estimate these costs to any degree of accuracy. However, it is important to note that the Council has no funds budgeted for any of these costs, regardless of the amount.

Thank you for your attention and I would be pleased to respond to any questions you may have.

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Assembly Judiciary Committees, representatives of the deans of the law schools of Marquette University and the University of Wisconsin, the president-elect's designee and three representatives from the State Bar of Wisconsin, and two private practice attorneys appointed by the Governor.